on the initial quarterly period filing date, April 21, 2008.

NAM named as defendants the U.S. attorney for the District of Columbia, the Secretary of the Senate, and the Clerk of the House. The Secretary and the Clerk are responsible for providing guidance and assistance on lobbying disclosure requirements, receiving lobbying registration and report filings, reviewing, inquiring, and verifying the accuracy of the filings without investigating, notifying lobbyists that appear not to be in compliance with the law, and notifying the U.S. attorney of lobbyist who have been so notified and have failed to submit an appropriate response. The U.S. attorney has the duty to enforce the disclosure requirements through civil, and, under the new law, criminal, actions.

This resolution authorizes the Senate legal counsel to represent the Secretary of the Senate to defend the constitutionality of the lobbying disclosure amendment in the Honest Leadership and Open Government Act and to seek dismissal of the action, in conjunction with counsel for the House of Representatives and the Department of Justice.

Senate counsel will present to the court the bases for the Congress's judgment, after more than a dozen years of experience under the Lobbying Disclosure Act, that enhanced reporting requirements are necessary to inform Congress and the public of the identity of those organizations actively participating in lobbying the Federal Government. As Justice Louis Brandeis famously wrote, ''Sunlight is said to be the best of disinfectants.''

The lobbying amendments enacted last year were an important part of the Congress's efforts to restore public confidence through integrity and openness in Government and lobbying activities. Disclosure of the identities of organizations that actively participate in supervising or planning lobbying campaigns will yield a sizable public benefit while imposing a modest burden on the exercise of the right of organizations such as the National Association of Manufacturers freely to associate to petition the Government in furtherance of their legislative agenda.

REMEMBERING DENISE ANN PHOENIX

Mr. REID. Mr. President, I rise today to recognize Denise Ann Phoenix, a role model, native Nevadan, and hero. Ms. Phoenix, known by her nickname ''Auntie,'' devoted her life to improving her Native American community and promoting child safety. Following in the footsteps of her father, Leroy Phoenix, Sr., she pursued a career in law enforcement and became one of few women to serve as an investigator with the Bureau of Indian Affairs. She died in the line of duty on February 14, 2008, after coming into contact with an unidentified substance and contracting a fatal lung disease. She was 42 years old.

Ms. Phoenix grew up on the Pyramid Lake Paiute Reservation in northern Nevada. After graduating from Sparks High School, she began her career as a tribal ranger on the reservation and later became BIA chief of police of Carson City, NV. She emphasized the importance of community-oriented policing and her service was exemplary. She will continue to be an inspirational example to young Native American women.

The dedication Ms. Phoenix demonstrated as an officer was complemented by her dedication to children. In 2000, she lost her own children, Shasta and Justin, along with her brother Ronald, to a car accident along the Pyramid Highway in Sparks, NV. In response to this devastating tragedy, she established youth outreach programs in her children's memory. She was also instrumental in getting a median divider installed on the stretch of road where the accident occurred, once again showing her profound commitment to the safety of others.

Though I am saddened by her passing, I share with this body my gratitude for her devotion to her community. I also extend to her family, friends, and colleagues my condolences.

PRESERVE ACCESS TO AFFORDABLE GENERICS ACT

Mr. KYL. Mr. President, I ask unanimous consent to have the following letter from the Justice Department commenting on S. 316, the Preserve Access to Affordable Generics Act, printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF, LEGISLATIVE AFFAIRS,
Washington, DC, February 12, 2008.

Senator Jon Kyl,
U.S. Senate,
Washington, DC.

DEAR SENATOR KYL: This responds to your request for the Department's views regarding the competitive implications of S. 316, the ''Preserve Access to Affordable Generics Act.'' S. 316 addresses the issue of reverse payments associated with the settlement or resolution of an infringement lawsuit in the context of the Hatch-Waxman Act. The bill would make it a per se violation of the antitrust laws to be a party to an agreement in which an Abbreviated New Drug Application (ANDA) filer receives value and agrees not to research, develop, manufacture, market, or sell the ANDA product for any period of time. The Department believes that the bill addresses a serious competition issue, but, for the reasons discussed below, the Department has concerns with this bill as drafted.

As an initial matter, there is the potential for such settlements to be anticompetitive. For example, if the potential losses in profits due to increased competition from entry by the ANDA filer are large, the ANDA filer may be persuaded to drop a strong claim of patent invalidity or non-infringement in return for significant payments. As described below, however, settlements between an ANDA filier and the patent holder also can benefit consumer welfare. Accordingly, the Department of Justice does not believe per se liability under the antitrust laws is the appropriate standard. Per se liability generally is reserved for only those agreements that unequivocally have an anticompetitive effect, while a rule of reason analysis is better suited to instances when the economic impact of the agreement is less certain. In this context, per se illegality could increase investment risk and litigation costs to all parties. These factors run the risk of deterring generic challenges to patents, delaying entry of competition from generic drugs, and undermining incentives to create new and better drug treatments or studying additional uses for existing drugs.

The United States has a strong policy of encouraging settlement of litigation. A settlement reduces the time and expense of litigation, which can be quite substantial. Further, it reduces the uncertainty associated with the pending litigation. A settlement can thereby free up management time and resources and reduce risk, enabling a company to focus on developing new and better products.

The Hatch-Waxman Act context presents a distinct set of circumstances, but settlements creates a structure designed to encourage generic drug makers to challenge these patent rights by asserting either that the relevant patents are not valid or that the generic version would not infringe the patents. Among other things, the Hatch-Waxman Act provides an opportunity for the generic company and the patent holder to litigate those issues prior to the generic's launch of a potentially infringing product. Thus, unlike most patent litigation in which the patent holder has a claim for damages, the patent holder in the Hatch-Waxman context typically has no claim for damages because the generic company has not yet launched a product.

In any patent litigation, the principle means available to the patent holder to induce the generic company to settle the litigation is to offer something of value. If the patent holder has a damages claim for infringement, it can offer to reduce or waive its damages. However, in the Hatch-Waxman context the patent holder typically has no damages claim, so its only means of offering value to induce a settlement is to offer to transfer something of value, such as cash or other assets. Under S. 316, the only value that a patent holder could offer to settle a patent infringement claim would be ''the right to market the ANDA product prior to the expiration of the patent'' at issue (i.e., waiving its patent rights in whole or in part). The per se liability under S. 316 eliminates any other transfer of value if the settlement also includes a provision requiring the generic company to respect for any period of time the patent holder's right to exclude under the patent. The net result may be to reduce the likelihood of potentially beneficial settlements and to increase the risk that a generic company would need to litigate a case to judgment (and through an appeal in many instances). Patent holders would face greater disincentives to investing in research and development of new and better treatments if they had to litigate every challenge to a judgment and through an appeal. Further, such litigation can take many years to complete and will divert the time, attention and resources of both parties during that time.

Settlement should not serve as a vehicle to enable patent holders to preserve or expand invalid or non-infringed patents by dividing anticompetitive profits with settling challengers. However, the public policy favoring settlements, and the statutory right of patentees to exclude competition within the scope of their patents, would potentially be

frustrated by a rule that subjected patent settlements involving reverse payments to automatic or near-automatic invalidation. These competing considerations suggest that an appropriate legal standard should take into account the relative likelihood of success of the parties' claims and the potential benefits of a settlement in a given situation. It is important that parties maintain the ability to settle, and that the law permit flexibility for settlement negotiations to capture efficient agreements that are motivated by legitimate business objectives rather than anticompetitive goals.

Finally, we note that subsection 4(a) of the bill appears to contain a typographical error. We believe that the intended reference to the United States Code should be ''21 U.S.C. 355 note'' (rather than section ''3155'').

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that, from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

BRIAN A. BENCZKOWSKI,
Principal Deputy Assistant Attorney General.

SCHOOL SAFETY AND LAW ENFORCEMENT IMPROVEMENT ACT

Mr. LEAHY. Mr. Presdient, since my last statement on the need for prompt congressional action to address incidents involving threatening conduct and, too often, deadly acts of violence at our schools and college campuses nationwide, the violent incidents have continued, with tragic results.

In the week between February 8 and February 15, there were at least four incidents at schools and universities resulting in death or serious injury to victims of all ages.

On February 8, a female student killed two other students, and then herself, inside a classroom on the campus of Louisiana Technical College in Baton Rouge. Three days later, a student at Mitchell High School in Memphis, TN, was left in critical condition after a violent incident in the school's cafeteria. The day after that, a 15-year-old boy at E.O. Green Junior High in Oxnard, CA, was critically wounded by a classmate. He was later declared brain dead.

Then, on February 14, tragedy struck at Northern Illinois University. A former student opened fire in a geology class, killing 5 students and wounding 16, before killing himself. As hundreds of mourners remembered one of the Northern Illinois University victims at a funeral service on February 19, more than 1,000 Virginia Tech students gathered in solidarity for a candlelight vigil in Blacksburg, VA.

It has been over 10 months since the horrific incident at Virginia Tech resulted in the tragic deaths of 32 students and faculty members, and serious injuries to many other innocent victims. During that time, we have seen a barrage of new incidents at our schools and college campuses nationwide.

The Judiciary Committee reported out the School Safety and Law Enforcement Improvement Act of 2007, S. 2084, more than 6 months ago to address these incidents. Regrettably, the Senate has failed to take up and pass that bill to improve school safety. This comprehensive legislation should be considered and passed without further delay.

In originating the bill more than 6 months ago, the Judiciary Committee showed deference to Governor Tim Kaine and the task forces at work in Virginia, and sought to complement their work and recommendations. Working with several Senators, including Senators BOXER, REED, SPECTER, FEINGOLD, SCHUMER, and DURBIN, the committee originated this bill and reported it at the start of the 2007 academic year. My hope was that Congress would adopt these critical school safety improvements last fall.

The recent incidents at E.O. Green Junior High, Mitchell High School, LA, Technical College and Northern Illinois University are just a few of the tragic events that have claimed the lives or resulted in serious injuries to students in the past few months. Since this bill was reported out of the Judiciary Committee, we have seen tragic deaths at Delaware State University and the University of Memphis, and grievous injuries sustained by students and teachers at SuccessTech Academy in Cleveland, OH. We have also seen numerous lockdowns nationwide as a result of threatening conduct in our schools, including recent lockdowns at Fern Creek High School in Louisville, KY, and St. Peter's College in Jersey City, NJ.

The School Safety and Law Enforcement Improvement Act would address the problem of violence in our schools in several ways. The bill authorizes Federal assistance for programs to improve the safety and security of our schools and institutions of higher education, provides equitable benefits to law enforcement serving those institutions including bulletproof vests, and funds pilot programs to develop cutting-edge prevention and intervention programs for our schools. The bill also clarifies and strengthens two existing statutes—the Terrorist Hoax Improvements Act and the Law Enforcement Officers Safety Act—which are designed to improve public safety.

Specifically, the bill would improve the safety and security of students both at the elementary and secondary school level and on college and university campuses. The K–12 improvements are drawn from a bill that Senator BOXER introduced last April, and I want to thank Senator BOXER for her hard work on this issue. The improvements include increased funding for much-needed infrastructure changes to improve security as well as the establishment of hotlines and tip-lines, which will enable students to report potentially dangerous situations to school administrators before they occur.

To address the new realities of campus safety in the wake of Virginia Tech and more recent college incidents, the bill also creates a matching grant program for campus safety and security to be administered out of the COPS Office of the Department of Justice. The grant program would allow institutions of higher education to apply, for the first time, directly for Federal funds to make school safety and security improvements. The program is authorized to be appropriated at $50,000,000 for the next 2 fiscal years. While this amounts to just three dollars per student each year, it will enable schools to more effectively respond to dangerous situations on campus.

The bill would also make sworn law enforcement officers who work for private institutions of higher education and rail carriers eligible for death and disability benefits, and for funds administered under the Byrne grant program and the bulletproof vest partnership grant program. Providing this equitable treatment is in the best interest of our Nation's educators and students, and will serve to place the support of the Federal Government behind the dedicated law enforcement officers who serve and protect private colleges and universities nationwide. I commend Senator JACK REED for his leadership in this area.

The bill helps law enforcement by making improvements to the Law Enforcement Officers Safety Act of 2003, LEOSA. These amendments to existing law will streamline the system by which qualified retired and active officers can be certified under LEOSA. It serves us all when we permit qualified officers, with a demonstrated commitment to law enforcement and no adverse employment history, to protect themselves, their families, and their fellow citizens wherever those officers may be.

The bill focuses on prevention as well, by incorporating the PRECAUTION Act at the request of Senators FEINGOLD and SPECTER. This provision authorizes grants to develop prevention and intervention programs for our schools.

Finally, the bill incorporates the Terrorist Hoax Improvements Act of 2007, at the request of Senator KENNEDY.

The Senate should move forward and act. The Virginia Tech Review Panel—a body commissioned by Governor Kaine to study the Virginia Tech tragedy—has already issued its findings based on a 4-month long investigation of the incident and its aftermath. This bill would adopt a number of recommendations from the review panel aimed at improving school safety. We must not miss this opportunity to implement these initiatives nationwide, and to take concrete steps to ensure the safety of our kids. I hope the Senate will promptly move forward to invest in the safety of our students and better support law enforcement officers across the country by considering and passing the School Safety and Law Enforcement Improvement Act of 2007.